**SANGGARALINGAM ARUMUGAM**

**v.**

**WONG KOOK WAH & ANOR.**

HIGH COURT MALAYA, IPOH
AJAIB SINGH J
[CIVIL APPEAL NO. 61 OF 1982]
9 MAY 1984

***TORT:*** *Vicarious liability - Master and Servant - Negligence - Course of employment - Road accident - Apprentice - Whether servant/agent - Whether Master liable - Duty of Master.*

***CONTRACT:*** *Notice at Master's premises -"All vehicles stored or driven by our employees are at owners risk" - "We accept no responsibility for loss or damage" - Whether exclusion clause exempting Master liability incorporated in contract.*

This was an appeal against the decision of the learned President, Sessions Court, Ipoh whereby he dismissed the appellant's claim for damages arising out of a motor accident. The appellant had averred that he had sent his motor car to the 2nd respondent's workshop for repairs. As it was being test driven by the 1st respondent, as apprentice, the servant or agent of the 2nd respondent on a public highway, it met with an accident with another motor vehicle whereby he suffered injuries and loss. The 2nd respondent denied the allegations stating that the said alleged agent or servant had driven the car without the 2nd respondent's consent. Also, that the appellant knew or ought to have known that the 1st respondent had no authority or permission to drive the car and he was not acting in the course of his employment. Indeed, it is appropriate to mention that there was a sign board (notice) at the 2nd respondent's premises stating that "all vehicles stored or driven by our employees are at owner's risk. We accept no responsibility for loss or damage".

**Held:**

**[1]** On the evidence adduced in the lower Court the appellant was entitled to judgment.

**[2]** There was hardly any evidence to indicate that the terms of the notice were incorporated in any agreement between the parties so as to have the effect of protecting the respondents from liability.

**[3]** There was no evidence to show that the appellant knew of the notice or that his attention was drawn to it by the 2nd respondent. (*Thornton v. Shoe Lane Parking Ltd.*)

**[4]** In all the circumstances of the case and on the evidence adduced in the lower Court the learned President ought to have held that the 1st respondent was indeed the agent or servant of the 2nd respondent when he drove the appellant's motor car. The 2nd respondent were thus vicariously liable for the negligence of the 1st respondent.

**[5]** In holding that the 1st respondent was solely liable for the accident the Court awarded the appellant a sum of RM18,000 all in for the injuries, pain and suffering.

*[Appeal allowed.]*

**Case referred to:**

*Thornton v. Shoe Lane Parking Ltd. [1971] 1 All ER 686*

*For the appellant - Mr. S. Tehivanthiran; M/s. Thevin Chandran Siva Wong & Jamil*
*For the respondents - Mohd. Noor Yahaya*

**[Editor's Note**: Appeal by the respondents to the Federal Court (as it was then) was dismissed on 22 July 1985.]

**JUDGMENT**

**Ajaib Singh J:**

This was an appeal against the decision of the learned President whereby he had dismissed the appellant's claim for damages arising out of a motor accident. In the amended statement of claim in the lower Court the appellant had averred that he had sent his motor car to the respondent's workshop for repairs and that as it was being test driven by the agent or employee of the respondent on a public highway it met with an accident with another motor vehicle whereby the appellant suffered injuries. He alleged that the accident occurred as a result of the negligence of the said agent or servant or the respondent.

The respondents denied the allegation stating that the said alleged agent or servant had driven the car without the consent, authority or permission of the respondents. They averred that the appellant should not have allowed the alleged servant or agent to drive the car as the appellant knew or ought to have known that the said agent or employee had no authority or permission to drive the car and that he was not acting in the course of his employment.

The alleged servant or agent was one Wong Kook Wah the 1st defendant in the lower Court action against whom the appellant obtained judgment by default on 11 April 1980.

I allowed the appeal as I was of the view that on the evidence adduced in the lower Court the appellant was entitled to judgment. There was a sign board at the premises (Exhibit P1) stating that "All vehicles stored or driven by our employee are at owners' risk. We accept no responsibility for loss or damage". However there was hardly any evidence to indicate that the terms of the notice were incorporated in any agreement between the parties so as to have the effect of protecting the respondents from liability. There was no evidence to show that the appellant knew of the notice or that his intention was drawn to it by the respondents. A case on point appears to be that of *Thornton v. Shoe Lane Parking Ltd.* [1971] 1 All ER 686 where the head-note is as follows-

The plaintiff drove his car to an automatic car park owned by the defendants. A notice was displayed outside stating the charges and including the words "All cars parked at owners risk". The plaintiff drove his car up to the entrance where a traffic light showed red. There was no one in attendance. As the plaintiff drove in the light turned to green and a ticket was pushed out from a machine. The plaintiff took the ticket, and drove his car on into the garage. It was taken up by mechanical means to the floor above. The plaintiff looked at the ticket to see the time on it. He saw that the ticket also contained some printed wording which he did not read. The wording stated that the ticket was issued subject to the conditions displayed on the premises. To find where the conditions were displayed the plaintiff would have had to drive the car into the garage and walk around. The conditions were lengthy and included words exempting the defendants not only from liability for damage to cars but also from liability for any injury to a customer however caused, whilst his car was in the car park. The plaintiff returned later to collect his car but whilst in the car park there was an accident in which he was severely injured. The trial Judge held that the accident was half the fault of the defendants and awarded the plaintiff damages accordingly. The defendants appealed on the ground that they were protected from liability by the exempting condition.

Held - The defendants were not able to avoid liability by relying on the exempting condition because, in order to show that the plaintiff was bound by the condition, it was necessary to show either that he knew of it or that the defendants had done what was reasonably necessary to draw it to his attention; for this purpose, where the condition was exceptionally wide and destructive of the plaintiff's rights or was one which was not shown to be usual in that class of contract, it was not sufficient to show that the plaintiff had been given notice that the ticket was issued subject to conditions; it must be shown that adequate steps had been taken to draw his attention in the most explicit way to the particular exempting condition relied on; in the present case the defendants had failed to show that the plaintiff knew of the condition or that they had taken sufficient steps to draw his attention to it.

Wong Kook Wah was an apprentice of the defendants and in all the circumstances of the case and on the evidence adduced in the lower Court the learned President ought to have held that he was indeed the agent or servant of the respondents when he drove the appellant's motor car. The respondents were thus vicariously liable for the negligence of Wong Kook Wah.

On the question of liability it is quite clear from the sketch plan and police report and the evidence of the appellant himself that the accident was caused solely by the negligence of the respondents' agent or servant Wong Kook Wah.

The appellant had received fairly serious injuries. Taking the injuries one by one the sum total would come to about RM26 to RM28 thousand dollars. But taking into account the element of overlapping I awarded a sum of RM18,000 all-in for the injuries and pain and suffering. I make no award on special damages as there was no evidence at all to substantiate this claim.

Also found at [1987] 2 CLJ 255